



CITY OF SAINT PAUL
Christopher B. Coleman, Mayor

375 Jackson Street, Suite 220
Saint Paul, Minnesota 55101-1806

Telephone: 651-266-8989
Facsimile: 651-266-9124
Web: www.stpaul.gov/dsi

Agenda SITE PLAN REVIEW COMMITTEE

Wednesday, November 12, 2014
2nd Floor Conference Room
375 Jackson Street, Suite 218

<u>Time</u>	<u>Project Name and Location</u>
9:00	Saint Paul Assisted Living Facility 1925 Norfolk Avenue Addition to existing senior housing facility

Applicants should plan to attend this meeting.

At this meeting you will have a chance to discuss the site plan for your project with Saint Paul's Site Plan Review Committee. The Committee is made up of City staff from Zoning, Traffic, Sewers, Water, Public Works, Fire Inspections, and Parks. You are encouraged to bring your engineer, architect, or contractor with you to handle any technical questions raised by city staff. The purpose of this meeting is to simplify the review process by letting the applicant meet with staff from a number of departments at one time. Staff will make comments and ask questions based on their review of the plans. By the end of the meeting you will know if the site plan can be approved as submitted or if revisions will be required. Staff will take minutes at the meeting and send you a copy.

The meeting room is on the skyway level and 25' to your left as you get out of the elevator.

Parking

A few free parking spaces are available in our visitor parking lot off of 6th Street at Jackson. Parking is also available at on-street meters. The closest parking ramp is on Jackson one block south of our office between 4th and 5th Street.

If you have questions, please contact Tom Beach at 651-266-9086 or tom.beach@ci.stpaul.mn.us.

FOR THE FULL ZONING COMMITTEE AGENDA SECTION

of this packet go to the link below:

<http://stpaul.gov/index.aspx?NID=3436>

Thank you

Sonja Butler

Planning Commission Secretary/Office Assistant IV

1400 City Hall Annex

25 Fourth Street West

Saint Paul, MN 55102

651-266-6573



CITY OF SAINT PAUL
Christopher B. Coleman, Mayor

25 West Fourth Street
Saint Paul, MN 55102

Telephone: 651-266-6700
Facsimile: 651-228-3220

DATE: November 7, 2014
TO: Planning Commission
FROM: Zoning Committee
SUBJECT: Results of November 6, 2014 Zoning Committee Hearing

OLD BUSINESS

Recommendation

Staff Committee

1. **Forrest Heating Inc. (14-324-859)**
Establishment of nonconforming use as a heating service business

Denial Laid Over
(7 - 0)

Address: 995 Burns Ave
North side at Clermont

District Comment: District 4 made no recommendation

Support: 3 people spoke, 0 letters

Opposition: 0 people spoke , 0 letters

Hearing: closed

Motion: Lay over to November 25, 2014

NEW BUSINESS

Recommendation

Staff Committee

2. **Face to Face Health and Counseling Service (14-337-613)**
Rezone from RT1 Two Family Residential to T2 Traditional Neighborhood

Approval Approval
(7 - 0)

Address: 798 Rose Ave E
between Arcade and Wiede

District Comment: District 5 recommended approval

Support: 0 people spoke, 1 letter

Opposition: 0 people spoke , 0 letters

Hearing: closed

Motion: Approval

	<u>Staff</u>	<u>Recommendation</u> <u>Committee</u>
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3. **Big Steer Meats (14-339-543)**
Rezone from R4 One-Family Residential to B2 Community Business and White Bear Ave. Overlay District

Approval	Approval (7 - 0)
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Address: 1762 Minnehaha Ave E
between White Bear Avenue and Flandrau

District Comment: District 1 recommended approval

Support: 0 people spoke, 1 letter

Opposition: 0 people spoke , 0 letters

Hearing: closed

Motion: Approval

	<u>Staff</u>	<u>Recommendation</u> <u>Committee</u>
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4. **Joe Urbanski (14-339-430)**
Rezone from B2 Community Business to T2 Traditional Neighborhood

Approval	Approval (7 - 0)
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Address: 1396 White Bear Ave N
between Sherwood and Cottage E

District Comment: District 2 recommended approval

Support: 0 people spoke, 1 letter

Opposition: 0 people spoke , 0 letters

Hearing: closed

Motion: Approval

	<u>Staff</u>	<u>Recommendation</u> <u>Committee</u>
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5. **Bring Your Part Auto (14-339-857)**
Reestablishment of nonconforming use for auto repair

Approval with conditions	Approval with conditions (7 - 0)
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Address: 847 Hudson Road
NE corner at intersection with Plum and
Bates

District Comment: District 4 made no recommendation

Support: 0 people spoke, 1 letter

Opposition: 1 person spoke , 1 letter

Hearing: closed

Motion: Approval with conditions

6.

Sunlight Senior Living (14-339-687)

Conditional use permit to add 23 assisted living units (for a total of 48), and to add 10 memory care units (for a total of 19). Variances of maximum lot coverage and minimum rear yard setback

<u>Staff</u>	<u>Recommendation</u>	
	<u>Committee</u>	
Approval with conditions	Approval with conditions	(7 - 0)

Address: 400 Western Ave N
between Fuller and St. Anthony Avenue

District Comment: District 8 made no recommendation

Support: 0 people spoke, 0 letters

Opposition: 0 people spoke , 0 letters

Hearing: closed

Motion: Approval with conditions

city of saint paul
planning commission resolution
file number _____
date _____

WHEREAS, Face to Face Health and Counseling Service Inc., Zoning File # 14-337-613, has applied for a rezoning from RT1 Two Family Residential to T2 Traditional Neighborhood under the provisions of § 61.801(b) of the Saint Paul Legislative Code, on property located at 798 Rose Ave E, Parcel Identification Number (PIN) 29.29.22.11.0224, legally described as Oak Ville Park Subd Lot 15 Vac Alley Accruing And All Of Lots 1 Thru 5 And Lots 16 Thru 18 Blk 18 Subj To Alley Opened Per Doc #3310105; and

WHEREAS, the Zoning Committee of the Planning Commission, on November 6, 2014, held a public hearing at which all persons present were given an opportunity to be heard pursuant to said application in accordance with the requirements of § 61.303 of the Saint Paul Legislative Code; and WHEREAS, the Saint Paul Planning Commission, based on the evidence presented to its Zoning Committee at the public hearing as substantially reflected in the minutes, made the following findings of fact:

1. The applicant requests rezoning from RT1 Two Family Residential to T2 Traditional Neighborhood of the northwest portion of the parcel identified as PIN 29.29.22.11.0224 to construct a garage for accessory storage.
2. The parcel identified as PID 29.29.22.11.0224 is a split-zoned parcel. Rezoning the northwest portion of the parcel would make the entire parcel one zoning district.
3. The proposed zoning is consistent with the way this area has developed. Adjacent properties along Arcade St and Rose Ave are zoned T2 and B2 and have developed with a mix of retail and commercial development in this area.
4. The proposed zoning is consistent with the Comprehensive Plan, which designates the area along Arcade Street as a Mixed-Use Corridor. Land Use Strategy 1.24 calls for a mix of uses on Mixed-Use Corridors.
5. The proposed T2 zoning allows a range of neighborhood-scale uses that are compatible with the surrounding residential and commercial uses.
6. Court rulings have determined that "spot zoning" is illegal in Minnesota. Minnesota courts have stated that this term "*applies to zoning changes, typically limited to small plots of land, which establish a use classification inconsistent with the surrounding uses and create an island of nonconforming use within a larger zoned property.*" The proposed T2 zoning is not "spot zoning" because the T2 uses are consistent with the surrounding residential and commercial zoning designations and uses.
7. The petition for rezoning was found to be sufficient on October 13, 2014: 19 parcels eligible; 13 parcels required; 13 parcels signed.

NOW, THEREFORE, BE IT RESOLVED, that the Saint Paul Planning Commission recommends to the City Council that the application of Face to Face Health and Counseling Service Inc. for a rezoning from RT1 Two Family Residential to T2 Traditional Neighborhood for property at 798 Rose Avenue E be approved.

moved by _____
seconded by _____
in favor _____
against _____

ZF # 14-337-013
Face to Face

PAYNE PHALEN DISTRICT FIVE PLANNING COUNCIL

STRONG  SAFE  WELCOMING  CONNECTED  NEIGHBORHOODS

November 5, 2014

Bill Dermody

City Planner
Planning & Economic Development
25 W. 4th St., Suite 1400;
Saint Paul, MN 55102

Re: Rezoning of 798 Rose Avenue E. between Arcade and Weide – Face to Face Counseling plans to construct an accessory structure

Dear Bill Dermody:

This letter documents that the Face To Face Health and Counseling presented preliminary plans to the Payne Phalen District Five Planning Council CPED Committee on July 1st, 2014. The CPED Committee had no objections to the plans and expressed a general desire to support the project which will help this agency function more efficiently.

Process Note:

At the point in time of the July 1st, 2014 meeting, the CPED Committee anticipated that they may re-assess the plans at a future point if there were substantive changes. There have not been changes to the plans as presented and the underlying considerations of the zoning change request remain the same. The CPED Committee meeting date where the application could be reviewed a second time is Wednesday, November 5th, 2014. This monthly CPED Committee meeting has cancelled. The CPED Committee has asked that a statement of no objection to the re-zoning be put into the record for this application. District Five has not heard any input from neighbors who were notified of the proposed change and encouraged to contact the District Council.

Please contact me if you have any questions about the District Council recommendation.

Sincerely,



Leslie McMurray, Executive Director

506 KENNY ROAD, SUITE 130, SAINT PAUL, MINNESOTA 55130-4554

TEL # (651) 774-5234  FAX # (651) 774-9745

E-MAIL: DISTRICT5@PAYNEPHALEN.ORG

WWW.PAYNEPHALEN.ORG

city of saint paul
planning commission resolution
file number _____
date _____

WHEREAS, Big Steer Meats, File # 14-339-543, has applied for a rezoning from R4 One-Family Residential to B2 Community Business and White Bear Avenue Overlay District under the provisions of § 61.801(b) of the Saint Paul Legislative Code, on property located at 1762 Minnehaha Ave E, Parcel Identification Number (PIN) 34.29.22.11.0002, legally described as G V Bacons Addition E 1/2 Of Lot 5 And All Of Lot 4 Blk 2; and

WHEREAS, the Zoning Committee of the Planning Commission, on November 6, 2014, held a public hearing at which all persons present were given an opportunity to be heard pursuant to said application in accordance with the requirements of § 61.303 of the Saint Paul Legislative Code; and

WHEREAS, the Saint Paul Planning Commission, based on the evidence presented to its Zoning Committee at the public hearing as substantially reflected in the minutes, made the following findings of fact:

1. The application requests rezoning from R4 to B2 and White Bear Avenue Overlay District to allow for expansion of the adjacent business.
2. The proposed zoning is consistent with the way this area has developed. White Bear Avenue is fronted by commercial and residential uses of varying lot depths, with commercial clustered around key intersections such as Minnehaha Avenue. The proposed zoning is consistent with the existing pattern of development.
3. The proposed zoning is consistent with the Comprehensive Plan, which designates the land along White Bear Avenue as a Mixed Use Corridor. It is consistent with the White Bear Avenue Small Area Plan by adopting the White Bear Avenue Overlay District.
4. The proposed zoning is compatible with the existing B2/White Bear Avenue Overlay zoning to the east along White Bear Avenue.
5. Court rulings have determined that "spot zoning" is illegal in Minnesota. Minnesota courts have stated that this term "*applies to zoning changes, typically limited to small plots of land, which establish a use classification inconsistent with the surrounding uses and create an island of nonconforming use within a larger zoned property.*" The proposed rezoning is not "spot zoning" in that it does not create an island of nonconforming use, but rather is consistent with adjacent zoning.
6. The petition for rezoning was found to be sufficient on October 21, 2014: 19 parcels eligible; 13 parcels required; 14 parcels signed.

NOW, THEREFORE, BE IT RESOLVED, that the Saint Paul Planning Commission recommends to the City Council that the application of Big Steer Meats to rezone from R4 One-Family Residential to B2 Community Business and White Bear Avenue Overlay District for property at 1762 Minnehaha Ave E be approved.

moved by _____
seconded by _____
in favor _____
against _____

Zoning Committee

My name is Audrey Fritz
I live across from
the Big Steer on White
Bear Ave.

I am for the Big Steer,
it's a good business
since the beginning.

Audrey Fritz

10-30-14

city of saint paul
planning commission resolution
file number _____
date _____

WHEREAS, Joe Urbanski, File # 14-339-430, has applied for a rezoning from B2 Community Business to T2 Traditional Neighborhood under the provisions of § 61.801(b) of the Saint Paul Legislative Code, on property located at 1396 White Bear Avenue N, Parcel Identification Number (PIN) 23.29.22.32.0082, legally described as Hayden Heights Lot 34 Blk 10; and

WHEREAS, the Zoning Committee of the Planning Commission, on November 6, 2014, held a public hearing at which all persons present were given an opportunity to be heard pursuant to said application in accordance with the requirements of § 61.303 of the Saint Paul Legislative Code; and

WHEREAS, the Saint Paul Planning Commission, based on the evidence presented to its Zoning Committee at the public hearing as substantially reflected in the minutes, made the following findings of fact:

1. The application requests rezoning from B2 to T2 to allow expansion of the residential use through conversion of a commercial unit in a mixed-use building to residential uses.
2. A variance for parking provision is not required because the parking requirement is not increased in this case by the conversion of units from commercial to residential.
3. The proposed zoning is consistent with the way this area has developed. T2 is consistent with the mixed-use nature of development along White Bear Avenue and serves as a transition between the commercial and residential districts.
4. The proposed zoning is consistent with the Comprehensive Plan, which designates the site as being part of a Mixed Use Corridor designation that calls for mixed uses such as those allowed in the T2 district. The proposed zoning is consistent with the White Bear Avenue Small Area Plan due to its continued inclusion in the White Bear Avenue Overlay District.
5. The proposed zoning is compatible with the surrounding mix of uses, including commercial and mixed uses along White Bear Avenue and residential uses to the east.
6. Court rulings have determined that "spot zoning" is illegal in Minnesota. Minnesota courts have stated that this term "*applies to zoning changes, typically limited to small plots of land, which establish a use classification inconsistent with the surrounding uses and create an island of nonconforming use within a larger zoned property.*" The proposed rezoning is not "spot zoning" in that it does not create an island of nonconforming use, but rather is consistent with adjacent zoning and land use.

NOW, THEREFORE, BE IT RESOLVED, that the Saint Paul Planning Commission recommends to the City Council that the application of Joe Urbanski to rezone from B2 Community Business to T2 Traditional Neighborhood for property at 1396 White Bear Avenue N be approved.

moved by _____
seconded by _____
in favor _____
against _____

city of saint paul
planning commission resolution
file number
date

WHEREAS, Jerry Castillo, Zoning File # 14-339-857, has applied for a reestablishment of nonconforming use for auto repair under the provisions of §62.109(e) of the Saint Paul Legislative Code, on property located at 847 Hudson Road, Parcel Identification Number (PIN) 33.29.22.32.0156, legally described as Subdivision Of B68 Lyman Dayto Lot 1 Blk 68; and

WHEREAS, the Zoning Committee of the Planning Commission, on November 6, 2014, held a public hearing at which all persons present were given an opportunity to be heard pursuant to said application in accordance with the requirements of §61.303 of the Saint Paul Legislative Code; and

WHEREAS, the Saint Paul Planning Commission, based on the evidence presented to its Zoning Committee at the public hearing as substantially reflected in the minutes, made the following findings of fact:

1. The applicant, Jerry Castillo, has applied for a reestablishment of a nonconforming use permit for the property at 847 Hudson Road. He wishes to operate an auto repair business at this location, offering installation of clients' own auto parts. The use has been discontinued for more than one year.
2. The structure and land are within the Dayton's Bluff Historic District and the building is listed as a contributing structure to that district. Any alterations to the exterior of the structure or the lot, including, but not limited to, paving, landscaping, curb cuts, sidewalks, fences or site arrangement must be reviewed and approved by the Heritage Preservation Commission or staff.
3. Section 62.109(e) states: *When a legal nonconforming use of a structure, or structure and land in combination, is discontinued or ceases to exist for a continuous period of more than one (1) year, the planning commission may permit the reestablishment of a nonconforming use if the commission makes the following findings:*
 - (1) *The structure, or structure and land in combination, cannot reasonably or economically be used for a conforming purpose.* This finding is met. The structure is a single-story building with a garage bay door and a small office space and surrounding surface parking and evidently designed for an auto-oriented use such as an auto repair facility.
 - (2) *The proposed use is equally appropriate or more appropriate to the district than the previous legal nonconforming use.* This finding is met. The proposed use is a re-establishment of the previous auto repair use.
 - (3) *The proposed use will not be detrimental to the existing character of development*

moved by _____
seconded by _____
in favor _____
against _____

in the immediate neighborhood or endanger the public health, safety, or general welfare. This finding can be met. This intersection has more than just single- and two-family dwellings surrounding it. There are several retail establishments, including on the opposite corner. However, in order to preserve the residential character of the neighborhood and to preserve the safety of individuals walking adjacent to the site, removal of at least one curb cut is recommended in order to improve safety of vehicles and pedestrians. The curb cut onto Hudson Road is at the pointed intersection of three streets (Hudson/Bates/Plum) and would appear to be a potential public safety hazard for street traffic and traffic entering/existing the property. If this curb cut is removed, public safety would be improved and the finding would be met. See condition 1.

- (4) *The proposed use is consistent with the comprehensive plan.* This finding is met. The District 4 Plan Summary (2009) calls for the reuse, rather than demolition, of existing commercial buildings (Strategy C3) as well as foster neighborhood-scale commercial (Strategy C8.2).
- (5) *A notarized petition of at least two-thirds of the owners of the described parcels of real estate within one hundred (100) feet of the subject property has been submitted stating their support for the use.* This finding is met. The petition was found sufficient on 10/21/2014: eight (8) parcels eligible; six (6) parcels required; six (6) parcels signed.

NOW, THEREFORE, BE IT RESOLVED, by the Saint Paul Planning Commission, under the authority of the City's Legislative Code, that the application of Jerry Castillo for a reestablishment of nonconforming use for auto repair at 847 Hudson Road is hereby approved, subject to the following conditions:

1. The applicant must apply for site plan review with the Department of Safety and Inspections. The submitted site plan must show removal of the curb cut at the intersection of Hudson/Bates/Plum, subject to approval by the Heritage Preservation Commission or its staff. Site plan approval must be acquired from the Department of Safety and Inspections.
2. Any alterations to the exterior of the structure or the lot, including, but not limited to, paving, landscaping, curb cuts, sidewalks, fencing, or site arrangement must be reviewed and approved by the Heritage Preservation Commission or staff.
3. The applicant must document for the Department of Safety and Inspections that he has a registered deed with Ramsey County.
4. The applicant must submit a \$5,000 performance deposit or bond; pay for a Team Code Compliance Inspection; receive Plan Review approval to pull permits to complete all of the required repairs listed in the code compliance report and complete the licensing approval process prior to operating any business activities at 847 Hudson Road.

ZONING COMMITTEE STAFF REPORT

1. **FILE NAME:** Bring Your Part Auto **FILE #** 14-339-857
 2. **APPLICANT:** Jerry Castillo **HEARING DATE:** November 6, 2014
 3. **TYPE OF APPLICATION:** Nonconforming Use Permit - Reestablishment
 4. **LOCATION:** 847 Hudson Road, east at intersection of Plum and Bates
 5. **PIN & LEGAL DESCRIPTION:** 332922320156; Lot: 1 Block: 68, Subdivision of block 68, Lyman Dayton's addition by H. A. Boardman
 6. **PLANNING DISTRICT:** 4
 7. **ZONING CODE REFERENCE:** §62.109(e) **PRESENT ZONING:** RT1
 8. **STAFF REPORT DATE:** 10/24/2014; Amended 11/5/2014 **BY:** Jake Reilly
 9. **DATE RECEIVED:** October 22, 2014 **60-DAY DEADLINE FOR ACTION:** December 21, 2014
-

- A. **PURPOSE:** Reestablishment of nonconforming use for auto repair
- B. **PARCEL SIZE:** Irregularly shaped "triangular" parcel with 120 feet fronting on Plum Street and 64 feet fronting on Hudson Road, totaling 5,100 sq. ft.
- C. **EXISTING LAND USE:** Vacant (former auto repair service)
- D. **SURROUNDING LAND USE:**
 - North: A mix of single- and multi-family residential and commercial (zoned RT1)
 - East: A mix of single- and multi-family residential and commercial (zoned RT1)
 - South: Highway right-of-way (Interstate 94)
 - West: A mix of single- and multi-family residential and commercial (zoned RT1)
- E. **ZONING CODE CITATION:** §62.109(e) lists the conditions under which the Planning Commission may grant a permit to reestablish a nonconforming use.
- F. **HISTORY/DISCUSSION:** This property has historically been an auto-related use. It is a contributing building in the Dayton's Bluff Historic District and was built in 1929 as a service station. It became a legal non-conforming use in the 1980s, according to records. It was an auto repair facility until at least 1999 when the business ceased operations. It has been on the Department of Safety and Inspections vacant building list since at least 2001, when a code compliance report was filed. That report has since expired. At this time the building is listed as a Category 2 vacant building. A complaint was filed with DSI on 10/30/2014 regarding work being done without a license or permit at this location. At the time this staff report was amended that complaint had not yet been resolved.
- G. **DISTRICT COUNCIL RECOMMENDATION:** The District 4 Council had not provided a recommendation at the time this staff report was prepared.
- H. **FINDINGS:**
 1. The applicant, Jerry Castillo, has applied for a reestablishment of a nonconforming use permit for the property at 847 Hudson Road. He wishes to operate an auto repair business at this location, offering installation of clients' own auto parts. The use has been discontinued for more than one year.
 2. The structure and land are within the Dayton's Bluff Historic District and the building is listed as a contributing structure to that district. Any alterations to the exterior of the structure or the lot, including paving, landscaping, curb cuts, sidewalks or site arrangement must be reviewed and approved by the Heritage Preservation Commission or staff.
 2. Section 62.109(e) states: *When a legal nonconforming use of a structure, or structure*

and land in combination, is discontinued or ceases to exist for a continuous period of more than one (1) year, the planning commission may permit the reestablishment of a nonconforming use if the commission makes the following findings:

- (1) The structure, or structure and land in combination, cannot reasonably or economically be used for a conforming purpose. This finding is met. The structure is a single-story building with a garage bay door and a small office space and surrounding surface parking and evidently designed for an auto-oriented use such as an auto repair facility.*
- (2) The proposed use is equally appropriate or more appropriate to the district than the previous legal nonconforming use. This finding is met. The proposed use is a re-establishment of the previous auto repair use.*
- (3) The proposed use will not be detrimental to the existing character of development in the immediate neighborhood or endanger the public health, safety, or general welfare. This finding can be met. This intersection has more than just single- and two-family dwellings surrounding it. There are several retail establishments, including on the opposite corner. However, in order to preserve the residential character of the neighborhood and to preserve the safety of individuals walking adjacent to the site, removal of at least one curb cut is recommended in order to improve safety of vehicles and pedestrians. The curb cut onto Hudson Road is at the pointed intersection of three streets (Hudson/Bates/Plum) and would appear to be a potential public safety hazard for street traffic and traffic entering/existing the property. If this curb cut is removed, public safety would be improved and the finding would be met. See condition 1.*
- (4) The proposed use is consistent with the comprehensive plan. This finding is met. The District 4 Plan Summary (2009) calls for the reuse, rather than demolition, of existing commercial buildings (Strategy C3) as well as foster neighborhood-scale commercial (Strategy C8.2).*
- (5) A notarized petition of at least two-thirds of the owners of the described parcels of real estate within one hundred (100) feet of the subject property has been submitted stating their support for the use. This finding is met. The petition was found sufficient on 10/21/2014: eight (8) parcels eligible; six (6) parcels required; six (6) parcels signed.*

- I. **STAFF RECOMMENDATION:** Based on the findings above, staff recommends approval of the reestablishment of nonconforming use for auto repair at 847 Hudson Road, subject to the following conditions:
 1. The applicant must apply for site plan review with the Department of Safety and Inspections. The submitted site plan must show removal of the curb cut at the intersection of Hudson/Bates/Plum. Site plan approval must be acquired from the Department of Safety and Inspections.
 2. Any alterations to the exterior of the structure or the lot, including paving, landscaping, curb cuts, sidewalks or site arrangement must be reviewed and approved by the Heritage Preservation Commission or staff.
 3. The applicant must document for the Department of Safety and Inspections that he has a registered deed with Ramsey County.
 4. The applicant must submit a \$5,000 performance deposit or bond; pay for a Team Code Compliance Inspection; receive Plan Review approval to pull permits to complete all of the required repairs listed in the code compliance report and complete the licensing approval process prior to operating any business activities at 847 Hudson Road.

To: Saint Paul Planning Commission
c/o Jake Reilly
jake.reilly@ci.stpaul.mn.us

cc: Kathy Lantry
City Council-Ward 7
c/o Ellen Biales
ellen.biales@ci.stpaul.mn.us

Deanna Abbott-Foster
Executive Director-DBD4CC
deanna@daytonsbluff.org

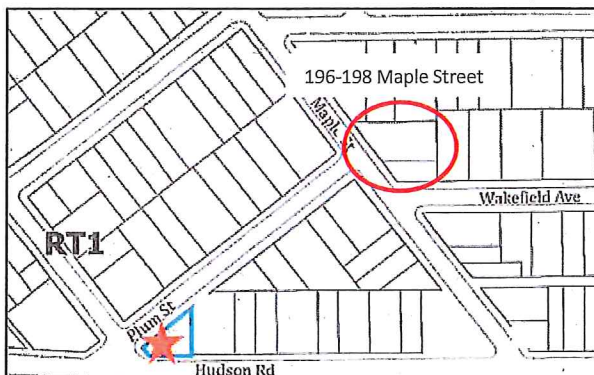
Subject: Zoning File No. 14-339-857
Reestablishment of nonconforming use for auto repair
847 Hudson Road – Bring Your Part Auto

We are writing to express our objections regarding the proposed auto repair business at 847 Hudson Road and to *respectfully request denial of the application to reestablish the non-conforming use at that location.*

We own two houses one block up the hill from 847 Hudson and have made our home in Dayton's Bluff for over 35 years. We overlook the property from our front yard and walk or drive by it every day, often numerous times.

Our request for denial is based upon numerous factors:

- The property is located in a RT1 Residential Zoning District and the Dayton's Bluff Heritage Preservation District, there are no similar commercial uses in the vicinity, and the proposed use will be detrimental to the character of the surrounding neighborhood;
- The physical limitations of the property will make it virtually impossible for the intended use to comply with Section 65.705 of the Zoning Code for an auto repair business, presenting an ongoing enforcement issue;
- A similar auto repair business previously located at the same location was a chronic problem in the neighborhood and similar issues can be anticipated with the proposed use;
- The applicant lives in the Minneapolis suburbs over 15 miles away and has no real vested interest in the neighborhood.



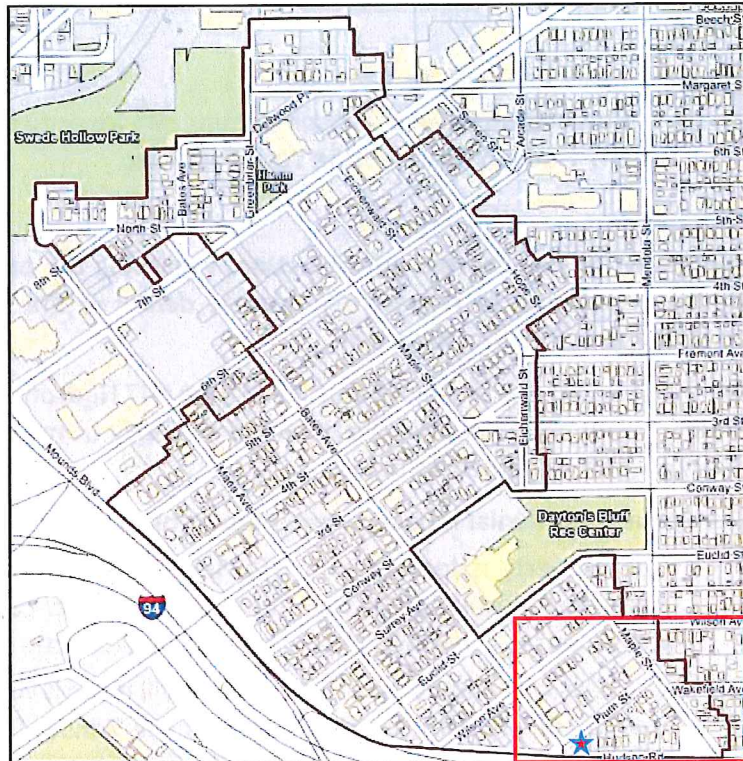
847 Hudson Road in RT1 Zone - 1 Block from 196-198 Maple

The proposed use for auto repair is allowed in a B3-General Business zone but is not reasonable in a residential RT1 zone. The proposed use will be detrimental to the existing character of development in the immediate neighborhood which has struggled for years to overcome the type of decline this business will likely embody, especially in such a visible location along a main neighborhood thoroughfare, Hudson Road. There is no B3 zoning anywhere in the immediate neighborhood.

This proposed use is contrary to the city's strategy to Preserve and Promote Established Neighborhoods and will undoubtedly create an issue with section 2.1.c. "Continue to enforce City codes", presumably not just housing codes but all city codes applicable in a designated residential neighborhood. This proposed use is also not compatible with Saint Paul's guiding vision for historic preservation and the guidelines, principles, and goals of the Dayton's Bluff Heritage Preservation District within which it is located.

Further, the proposed use is inconsistent with Saint Paul's Land Use Plan and with the District 4 Comprehensive Plan, notably clause H3. *"Identify problem properties and, in collaboration with District 4 and applicable neighborhood block clubs, develop strategies for addressing issues associated with them."* 847 Hudson Road has been a chronic problem property and the most effective strategy for addressing the probable future issues is to circumvent them right at the start by not allowing the nonconforming use.

Due to its unique shape and small size, neither the property nor the structure at 847 Hudson Road are reasonable for a commercial use such as Auto Repair. The property is simply too small to reasonably expect the proposed use to comply with the Zoning Code for such use:



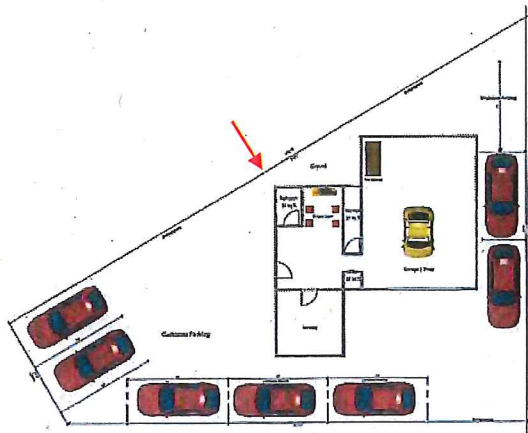
Dayton's Bluff Heritage Preservation District – inset same as figure above

Sec. 65.705. - Auto repair station.

A place where the following services may be carried out: general repair of automobiles, trucks, motorcycles, boats, etc.; engine rebuilding; and rebuilding or reconditioning of motor vehicles. The sale of engine fuels may or may not also be carried on.

Standards and conditions:

- (a) The minimum lot area shall be fifteen thousand (15,000) square feet.
- (b) A ten-foot landscaped buffer with screen planting and an obscuring fence shall be required along any property line adjoining an existing residence or adjoining land zoned residential.
- (c) All repair work shall be done within an enclosed building.
- (d) There shall be no outside storage.



Excerpt from site diagram in application

about 6' long and the red vehicles would be less than 10 feet long! (For reference, our compact SUV is about 15 feet in length.)

The lot area is only 4818 square feet, less than a third the size required by the code, and there is no room for a landscaped buffer along the property line adjoining the adjacent residentially-zone property to the east. The building itself is woefully undersized for the intended use; the scale of the diagram submitted with the application is deceiving and does not accurately represent the space. For example, the space between the sidewalk and the corner of the building (at the arrow) is only 28" and, based on the 8' width of the overhead door, the yellow vehicle shown in the service bay would only be

The only service bay is less than 12' X 16' in size, hardly enough room for service, much less room for workbenches and storage of tools, equipment, supplies, merchandise, et al. (Remember, my compact SUV is 15 feet long). As shown in the picture below, the applicant is apparently already having difficulty completing repair work within the enclosed building, even though no such work is to be allowed. (Note the Tire Sale on Saturday, October 25.)

Also of concern is the outside storage of vehicles awaiting service, presumably in the "Customer Parking". If the nature of the proposed business proposition is "Bring Your Part", the parked customer vehicles will likely be in various states of disrepair and, due to the small size of the service bay, undoubtedly under repair in situ; highly visible from the street, inevitably unsightly and detrimental to the surrounding neighborhood. And it is not unreasonable to expect that some of those cars will eventually sport For Sale signs!



The proposed nonconforming use is equally as inappropriate to the district as was the previous nonconforming use, a chronic problem property. The previous nonconforming use was finally discontinued after years of compliance problems with the previous business, Mike's Towing;

including many of the same types of issues that can reasonably be expected of Bring Your Part Auto. In addition to problems on the site itself, there will inevitably be vehicles parked on surrounding streets, including tow trucks with and without disabled vehicles attached. Mike was in the habit of parking numerous disabled vehicles on the hills of Plum and Maple Streets.



Bring Your Parts vehicle(s) parked on Plum Street

Whenever parking enforcement chalked the tires, he simply rolled them down the incline a bit (without even starting them) and left them parked until forced to move them again. As will likely be the case with the new occupant, Mike also repeatedly tried to sell vehicles from his lot (nicknamed "The Abused Car Lot" by the neighbors). **This proposed nonconforming use is a compliance and enforcement problem in the making.**



The applicant has very little vested interest in the neighborhood, neither in its history nor in its long-term future. While we admire the applicant's entrepreneurial spirit and honor his right to conduct business, we object to doing so at the expense of our historic neighborhood in which we and our neighbors have made significant investment. To date, by his actions, the applicant has demonstrated little regard for the City of Saint Paul, Dayton's Bluff and the immediate neighborhood.

This business is equally as undesirable in Dayton's Bluff as it would be in Columbia Heights.



1155 Cheery Lane NE, Columbia Heights on right

Based on these objections regarding the business, Bring Your Part Auto, proposed to be located at 847 Hudson Road, we respectfully request the Zoning Committee and, in turn, the Planning Commission deny the application to reestablish the non-conforming use at that location. Thank you.

D.A. "Clyde" Boysen
Rose Marie Felsheim
196-198 Maple Street
Saint Paul, MN 55106

city of saint paul
planning commission resolution
file number
date

WHEREAS, Cy Thao, File # 14-339-687, has applied for a conditional use permit to add 23 assisted living units (for a total of 48), and to add 10 memory care units (for a total of 19) with variances of maximum lot coverage and minimum rear yard setback under the provisions of §65.180; §61.503; §61.501; §61.202(b); §61.601 of the Saint Paul Legislative Code, on property located at 400 Western Avenue N, Parcel Identification Number (PIN) 36.29.23.42.0099, legally described as Western Area Addition Subj To Esmts The N 1/2 Of Vac Central Ave Adj And Lot 5 Blk 4; and

WHEREAS, the Zoning Committee of the Planning Commission, on November 6, 2014, held a public hearing at which all persons present were given an opportunity to be heard pursuant to said application in accordance with the requirements of §61.303 of the Saint Paul Legislative Code; and

WHEREAS, the Saint Paul Planning Commission, based on the evidence presented to its Zoning Committee at the public hearing as substantially reflected in the minutes, made the following findings of fact:

1. The application is for a conditional use permit to expand the services of Sunlight Senior Living to increase the total assisted living resident unit mix to 19 memory care units (from 9 units) and 48 assisted living units (from 25 units).
2. §65.180 *Assisted living*, refers to §65.182 *Nursing home*, for standards and conditions. There is one standard that applies, standard (a), *The yard requirements for multiple-family uses in the district apply*. This condition is met subject to approval of the variances for rear setback and maximum lot coverage.
3. §61.503(b) requires a new conditional use permit if the floor area of a conditional use expands by fifty percent or more. The existing building is 19,890 square feet and the proposed expansion is a 16,550 square feet addition.
4. §61.501 lists five standards that all conditional uses must satisfy:
 - (a) *The extent, location and intensity of the use will be in substantial compliance with the Saint Paul Comprehensive Plan and any applicable subarea plans which were approved by the city council*. The proposed assisted living facility is consistent with Comprehensive Plan Housing Strategy 1.1 *Increase housing choices across the city to support economically diverse neighborhoods* and Housing Strategy 2.18 *Support the expansion of housing choices for seniors*. This condition is met.
 - (b) *The use will provide adequate ingress and egress to minimize traffic congestion in*

moved by _____
seconded by _____
in favor _____
against _____

the public streets. The site plan shows an existing parking lot in front of the building, accessed from Western Avenue. The parking requirement will be met by the proposed site plans. The parking lot allows for maneuvering and adequate ingress and egress to minimize traffic congestion in the public streets. This condition is met.

- (c) *The use will not be detrimental to the existing character of the development in the immediate neighborhood or endanger the public health, safety and general welfare.* The assisted living facility, which is a residential use, will not be detrimental to the existing character of in the immediate neighborhood and it will not endanger the public health, safety and general welfare. This condition is met.
 - (d) *The use will not impede the normal and orderly development and improvement of the surrounding property for uses permitted in the district.* The use is permitted as a conditional use in the RM2 district. The use is in accord with the development types of medium density residential in the surrounding area and would not impede further development or improvements. This condition is met.
 - (e) *The use shall, in all other respects, conform to the applicable regulations of the district in which it is located.* This condition is met subject to granting of variances for rear yard setback and maximum lot coverage.
5. MN Stat. 462.357, Subd. 6 was amended to establish new grounds for variance approvals effective May 6, 2011. Required findings for a variance consistent with the amended law are as follows:
- (a) *The variance is in harmony with the general purposes and intent of the zoning code.* The intent of the code is to provide a reasonable distance between buildings in RM2 districts to ensure that residents have access to light and air as well as retain green space buffers between uses. Although there is a zero lot line at the rear, there is a 27 foot utility easement that cannot be built on that runs the length of the eastern (rear) property line that provides a buffer. This finding is met.
 - (b) *The variance is consistent with the comprehensive plan.* The Comprehensive Plan seeks to *increase housing choices across the city to support economically diverse neighborhoods* (Housing Chapter Strategy 1.1) and *support the expansion of housing choices for seniors* (Housing Chapter Strategy 2.18) The Land Use Chapter of the Comprehensive Plan (map LU-L) identifies Western Avenue as a Residential Corridor, where medium density residential uses are appropriate. This finding is met.
 - (c) *The applicant has established that there are practical difficulties in complying with the provision that the property owner proposes to use the property in a reasonable manner not permitted by the provision. Economic considerations alone do not constitute practical difficulties.* Maintaining the block frontage and nonconforming setback of the rear yard (east side) is necessary for continuity of the building interior including layout and systems. This finding is met.
 - (d) *The plight of the landowner is due to circumstances unique to the property not created by the landowner.* The rezoning of the property from B2 to RM2 in 2009 created the nonconforming setback. This finding is met.
 - (e) *The variance will not permit any use that is not allowed in the zoning district where the affected land is located.* This use is a conditional use in the RM2 district. This finding is met.
 - (f) *The variance will not alter the essential character of the surrounding area.* The existing building has a 4-6 inch rear setback. To continue this setback will not alter the essential character of the surrounding area. The building, with nonconforming

setbacks, is currently operating as an assisted living facility, therefore the proposed expansion and requested variances will not alter the essential character of the surrounding medium density residential uses and community business use on the block. This finding is met.

NOW, THEREFORE, BE IT RESOLVED, by the Saint Paul Planning Commission, under the authority of the City's Legislative Code, that the application of Cy Thao for a conditional use permit to add 23 assisted living units (for a total of 48), and to add 10 memory care units (for a total of 19) with variances of maximum lot coverage and minimum rear yard setback to allow lot coverage of 53% and a rear yard setback of 6 inches at 400 Western Ave N is hereby approved subject to the following condition:

1. Final plans approved by the Zoning Administrator for this use shall be in substantial compliance with the plans submitted and approved as part of this application.



CITY OF SAINT PAUL
Christopher B. Coleman, Mayor

*25 West Fourth Street
Saint Paul, MN 55102*

*Telephone: 651-266-6700
Facsimile: 651-228-3220*

Date: November 7, 2014
To: Planning Commission
From: Comprehensive Planning Committee
Subject: Parkland Dedication Amendments Study Draft for Public Review

1. Executive Summary

In 2007, Saint Paul adopted its current parkland dedication requirements in § 69.511 of the City's subdivision regulations based on state enabling legislation for municipal subdivision regulations. These regulations not only require parkland dedication at the time of platting, but also require parkland dedication at the time of building permits to better reflect the need for additional parkland created by new development. Parking is used as the measure of the density and intensity of the land use, which may change over time, to determine the amount of land to be dedicated at the time of building permits.

In 2012, the Planning Commission considered a code amendment to base parkland dedication at the time of platting just on the area of new lots for new development to better conform with state and federal law, and an amendment to decouple dedication at the time of building permits from parking in response to concern about the possibility of new development that may increase the need for parkland even though it has little or no parking (especially where less parking may be needed because of good transit, such as along the Green Line). Public testimony on these amendments raised questions about the legal basis for parkland dedication requirements at the time of building permits.

In 2013, the state legislature passed special legislation extending Saint Paul's authority to require parkland dedication so that it may be imposed at the time of building permits. In response, in 2014 the Planning Commission initiated a zoning study to consider amendments to move parkland dedication requirements at the time of building permits from the subdivision regulations to a more appropriate location, along with the amendments considered in 2012.

This study recommends amendments to the Saint Paul Zoning Code pertaining to parkland dedication requirements to do the following:

1. Amend § 69.511(b) to base the amount of required parkland dedication at the time of platting just on the total acreage of new lots being created for new residential, commercial, or industrial development that would create a need for additional parkland, and not on lots for which the use would be unchanged or for something that would not create a need for additional parkland.
2. Change the amount of parkland to be dedicated at the time of platting from 2% of the plat to a maximum of 9% of new lots being created for new residential and mixed-use development and 4% of new lots being created for new commercial or industrial development. If land is not wanted by the City, a fee in lieu of land would be paid at the time of building permits.

3. Move parkland dedication requirements that apply at the time of building permits from Zoning Code Chapter 69, Subdivision Regulations, to Chapter 63, Regulations of General Applicability, because they apply to building permits that may be unrelated to a new plat.
4. Decouple the parkland dedication requirement at the time of building permits from parking, and replace it with different measures of density and intensity of use that are always known and easy to track, so that even if a development has no parking there might still be a parkland dedication requirement, and so that the amount of the requirement is a reasonable portion of the buildable land proportionate to the need for parkland created by the development as required by state law.
 - Base the residential requirement on the increase in number of dwelling units on the parcel, with a parkland dedication requirement of 150 sq. feet per additional dwelling unit and a fee in lieu of land of \$1,200 per additional dwelling unit.
 - Base the commercial/industrial requirement on the increase or change in use of floor area, with a scale that reflects parkland need generated by the number of employees per 1,000 sq. feet of gross floor area generally associated with the commercial or industrial use type, with a fee in lieu of land equal to the value of the land that would otherwise be dedicated, and with an exemption for an increase or change in use of less than 5,000 sq. feet of floor area.
5. Change the maximum amount of land to be dedicated at the time of building permits for residential/mixed-use projects from 7% to 4.5% of the total area of the development parcel, and change the maximum fee in lieu of land from 33% to 100% of the value of the land that would otherwise be dedicated.
6. Change the maximum amount of land to be dedicated at the time of building permits for commercial/industrial projects from 2% to 0.5% of the total area of the development parcel, and change the maximum fee in lieu of land from 33% to 100% of the value of the land that would otherwise be dedicated.
7. Maintain the existing provision for prorated parkland dedication requirements for affordable housing units based on the affordability requirements placed on the unit.
8. Institute an administrative fee of 5% of the dedication requirement up to \$1,000 to offset city costs to administer the parkland dedication program.

2. Background

2.1 Original parkland dedication ordinance in 2007

In 2007, Saint Paul's current parkland dedication requirements in § 69.511 of the City's subdivision regulations were adopted based on the enabling legislation for municipal subdivision regulations in Minnesota Statutes § 462.358. It is unique in the State of Minnesota in that it is the only parkland dedication ordinance containing a two-part parkland dedication requirement:

1. § 69.511(b), *Parkland dedication at the time of platting*, a standard base 2% of the land at the time of platting that applies to all platting of land for residential, commercial, or industrial development; *plus*

2. § 69.511(d), *Parkland dedication at the time of building permits*, up to an additional 7% of the land at the time of building permits for residential, commercial, or industrial development based on the type, intensity, and density of the use of the land.

The legislative history of § 69.511 explains its unique two-part dedication requirement. The original language for § 69.511, based on the work of a consultant hired with funds provided by Friends of the Parks and Trails, was first considered by the City Council at a public hearing in 2006. It would only have applied to “platting of land for residential development that will increase the number of dwelling units.” It would not have applied when there is no proposed new plat and would not have applied to building permits.

There was opposition to the 2006 draft parkland dedication ordinance at the City Council hearing, from neighborhood development corporations and the Chamber of Commerce, contending that it would often be unreasonable, unfair, and disproportionate to any need for additional parkland created by new development. They noted, for example, that there would be a large parkland dedication requirement for a small townhouse project that needs to plat land under each unit to create separate ownership parcels, while there would be no parkland dedication requirement for a large new apartment building that was likely to create a greater need for additional parkland, but would not need a new plat. They also noted that Saint Paul, with more parkland than similar cities and substantially lower population than in the 1950s, generally does not need more parkland.

The draft ordinance was changed in response to the testimony. First, the parkland dedication requirement for residential plats was reduced. Second, it was broadened to also apply to commercial and industrial plats. Third, it was broadened to also require parkland dedication at the time of building permits, even when no new subdivision of land is involved. The result was a set of requirements to generate roughly the same amount of overall parkland dedication as the original ordinance, but to spread the requirements out over a larger number of projects.

The rationale for part of the parkland dedication requirement at the time of building permits was that it would help better meet the legal requirement in Minn. Stat. 462.358, Subd. 2c that the required “fee or dedication must bear a rough proportionality to the need created by the proposed subdivision or development.” This depends on the type, intensity, and density of the use of the land, something that may not be accurately known at the time of platting and that changes over time. The idea was that if land use changes from commercial or industrial to residential, or from low-density residential to high-density residential, it is reasonable to require parkland dedication to meet increased need created by the change in use.

2.2 Amendments considered in 2011-1012

In 2011, the Planning Commission initiated a zoning study to consider the following amendments to the parkland dedication requirements in § 69.511 of the subdivision regulations:

1. An amendment to § 69.511(b) to base the amount of required parkland dedication at the time of platting just on the total acreage of new lots being created for new residential, commercial, or industrial development that would create a need for additional parkland, and not on lots for which the use would be unchanged or for something that would not create a need for additional parkland, bringing the text of this code requirement into greater conformance with state and federal law, consistent with City Council variance decisions; and
2. Amendments to § 69.511(d) to decouple the parkland dedication requirement at the time of building permits from parking, and replace it with different measures of density and intensity

of use that are always known, easy to track, and would result in a roughly similar amount of parkland dedication so that even if a development has no parking there would still be a parkland dedication requirement, and so that the requirement is proportionate to the need for parkland created by the development as required by state law.

In 2012, the Planning Commission held a public hearing on the draft amendments at which broader issues were raised about the scope, amount, and consistency with state and federal law of the City's parkland dedication requirements, including the legal basis for parkland dedication requirements at the time of building permits.

2.3 Special legislation in 2013

In 2013, the state legislature enacted special legislation 2013 Minn. Laws chap. 85, art. 5, sec. 44 allowing the City to require the dedication of land or a fee for parks at the time of building permits. The special legislation states:

The city of St. Paul may require that a reasonable portion of land be dedicated to the public or impose a dedication fee in conjunction with the construction permit required for new housing units and new commercial and industrial development in the city, wherever located, for public parks, playgrounds, recreational facilities, wetlands, trails, or open space. The dedication of land or dedication fee must be imposed by an ordinance enacted by the city council. The cash fee may be set at a flat fee rate per net new residential unit. The ordinance may exclude senior housing and affordable housing from paying the fee or the dedication of land. The provisions of Minnesota Statutes, section 462.358, subdivisions 2b, paragraph (b); and 2c, apply to the application and use of the dedication of land or the dedication fee.

With the new special legislation extending authority for parkland dedication so that it may be imposed at the time of the building permits, in connection with the provisions and requirements in Minn. Stat. § 432.358, the City Attorney's Office has made the following determination.

- The City can require parkland dedication either at the time a new subdivision is platted or at the time of building permits, but for an individual property it is one or the other. It cannot be required at both times.
- The City can require dedication of parkland or cash in lieu of land, but for an individual property it is one or the other. It cannot require both dedication of parkland and cash in lieu of land.

2.4 Revised amendments based on special legislation

On January 24, 2014, the Planning Commission initiated a zoning study to consider the following amendments to parkland dedication requirements based on the revised enabling legislation:

1. An amendment to § 69.511(b) of the Subdivision Regulations to base the amount of required parkland dedication at the time of platting just on the total acreage of the new lots being created for new residential, commercial, or industrial development that would create a need for additional parkland, and not on lots for which the use would be unchanged or for something that would not create a need for additional parkland; and
2. Legislative Code amendments to remove existing language pertaining to parkland dedication requirements at the time of building permits from § 69.511 of the subdivision regulations, and to replace it with new requirements in the appropriate section of the City Legislative

Code for reasonable land dedication or impact fees for parks at the time of building permits that may be unrelated to any new subdivision, based on the new state law that provides for this.

3. Legal Basis for Parkland Dedication Requirements

3.1 Constitutional requirements

The “Takings Clause” of the Fifth Amendment of the United States Constitution provides that private property “shall not be taken for public use, without just compensation.” The Takings Clause does not prohibit the taking of private property. Instead, it places a condition on the exercise of that power.

The Minnesota Constitution contains similar language: “private property shall not be taken, destroyed or damaged for public use without just compensation.” In Wensmann Realty, Inc. v. City of Eagan, 734 N.W.2d 623 (Minn. 2007), the Minnesota Supreme Court, noted that “the language of the Takings Clause of the Minnesota Constitution can be construed to provide broader protections than the Takings Clause of the U. S Constitution.” For instance, in Westling v. County of Mille Lacs, 581 N.W.2d 815 (Minn. 1998) it was held that the Taking’s Clause purpose “is to ensure that the government does not require some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.”

3.2 United States Supreme Court decisions

The terms “essential nexus” and “rough proportionality” are legal tests associated with two seminal takings cases.

“Essential nexus” describes a “takings” test first adopted by the United States Supreme Court in 1987 in Nollan v. California Coastal Commission, 483 U.S. 825 (1987). The Nollan Court found that the California Coastal Commission’s approval of a building permit conditioned on the Nollan’s providing a public easement over their beachfront property constituted a “taking,” which required payment of just compensation because the Commission could not establish an “essential nexus” between the Commission’s legitimate interests and the extent of the imposed condition. The Nollan Court stated “the lack of nexus between the Commission’s condition and the original purpose behind the Commission’s restriction converts that purpose to an “out and out plan of extortion.” Id, at 837, (citation omitted).

The essential nexus between legitimate governmental interests and the regulations imposed to advance those interests in takings cases was subsequently determined in Dolan v. City of Tigard, 114 U.S. 374 (1994). In Dolan, a plumbing supply store owner wanted to pave an existing parking lot and expand the store. The property was bounded by a small stream along the back of the property. The city approved the owner’s plans subject to a condition that a portion of the property abutting the stream was dedicated a for a public greenway to minimize flooding which, the city reasoned, would occur due to the increase in impervious surfaces from the expanded building and paved parking lot. The city also required the property owner to dedicate a 15-foot wide bike path easement adjacent to the greenway in order to relieve traffic congestion.

The Dolan Court, guided by the doctrine of “unconstitutional conditions,” which holds that the “government may not require a person to give up a constitutional right [here the right to receive just compensation when property is taken for a public use] in exchange for a discretionary benefit conferred by the government where the property sought has little or no relationship to the

benefit,” *Id.*, at 385. The Court then proceeded to apply “the second part of our [Nollan essential nexus] analysis [which] requires us to determine whether the degree of exactions demanded by the city’s permit conditions bears the required relationship to the projected impact of petitioner’s proposed development.” *Id.*, at 388. To answer this test, the *Dolan* Court crafted the term “rough proportionality” to describe how to examine municipal findings to determine whether “the required dedication is related both in nature and extent to the impact of the proposed development. *Id.*, at 391. Rough proportionality, the Court reasoned, “best encapsulates what we hold to be the requirement of the Fifth Amendment.” *Id.* The Court ultimately found the city’s approval conditions to constitute a taking because the city failed to show the necessary relationship between the building expansion and parking lot plans and its requirements to dedicate a floodplain easement and bike path to the public. The Court closed its opinion noting “a strong desire to improve the public condition [will not] warrant achieving the desire by a shorter cut than the constitutional way of paying for the change.”

3.3 Minnesota Supreme Court 1976 decision on a parkland dedication ordinance

In *Collis v. City of Bloomington*, 246 N.W.2d 19 (1976), the Minnesota Supreme Court specifically considered whether a municipal parkland dedication ordinance constituted a taking without just compensation in violation of the United States and Minnesota Constitutions and addressed the constitutionality of the parkland dedication provisions in Minn. Stat. § 462.358. Holding the parkland dedication ordinance constitutional, the Court observed the following about the legal underpinnings of Minn. Stat. § 462.358:

“While in general subdivision regulations are a valid exercise of the police power, made necessary by the problems subdivisions create - i.e., greater needs for municipal services and facilities -, the possibility of arbitrariness and unfairness in their application is nonetheless substantial: A municipality could use dedication regulations to exact land or fees from a subdivider far out of proportion to the needs created by his subdivision in order to avoid imposing the burden of paying for additional services on all citizens via taxation. To tolerate this situation would be to allow an otherwise acceptable exercise of police power to become grand theft. But the enabling statute here prevents this from occurring by authorizing dedication of only a ‘reasonable portion’ of land for the purposes stated. We therefore hold the statute as constitutional.” *Id.*, at 26.

In upholding Bloomington’s parkland dedication ordinance, the Court noted that Minn. Stat. § 358 authorizes dedication of only “a reasonable portion of the buildable land” for parks and because the Bloomington ordinance said only that “as a general rule it is reasonable to require” dedication of up to 10% of the land or payment of up to 10% of the undeveloped land value, the dedications requirements of the Bloomington ordinance were “not unconstitutional on their face” largely because the provisions of the ordinance they may be applied to a property owner “are always subject to judicial review.” *Id.*, at 27. The *Collis* decision remains good law today.

The *Collis* decision is also noteworthy because it interpreted the term “reasonable portion” to mean “that portion of land which the evidence reasonably establishes the municipality will need to acquire for the purposes stated as a result of the approval of the subdivision.” *Id.*, at 26.

3.4 Minnesota enabling legislation for municipal parkland dedication requirements

Minn. Stat. § 462.358 gives municipalities authority to require dedication of a reasonable portion of the buildable land in new land subdivisions for use as public parks without having to

pay for the land. The statute also provides, under certain circumstances, that the dedication may take the form of cash in lieu of land so long as cash payment is equivalent to the value of the land required to be dedicated. 2013 Minnesota Laws, chap. 85, art. 5, sec. 44 extended this authority by allowing the City of Saint Paul to impose parkland dedication requirements or a fee in lieu thereof in conjunction with construction permits for new housing units and new commercial and industrial development.

Minn. Stat. § 462.358, Subd. 2c, entitled "*Nexus*," states that "the fee or dedication must bear a *rough proportionality* to the need created by the proposed subdivision or development." In 1980 the Minnesota legislature adopted the '*reasonable portion*' test from *Collis, Id.*, as part of Minnesota subdivision law. Today Minn. Stat. § 462.358, Subd. 2b(a), reads in pertinent part: "the regulations may require that a reasonable portion of the buildable land" be dedicated, and in Subd. 2b(e), "the municipality must reasonably determine that it will need to acquire that portion of land for the purposes stated... as a result of approval of the subdivision."

Implicit in this statutory language is the principle that if a new subdivision or development does not create a need for additional parkland, for example the area in and around the new subdivision is already adequately served by existing parks or because the new subdivision is for a use that would not increase the need for parkland, the municipality does not have the legal authority to require a land dedication for public parks or a payment of cash in lieu thereof. As noted in *Collis*, subdivision land dedications must be based "of necessity, [upon] a facts-and-circumstances test, but it is the only kind of test that will consider the myriad of factors which may bear on a municipality's needs for certain kinds of facilities and the relationship of a particular subdivision to those needs." *Id.*, 246 N.W.2d at 26.

4. Analysis

Parkland dedication requirements need to meet constitutional standards reflected in state and federal court rulings and standards set by state legislation. They also need to be in keeping with market conditions and reflect City needs.

St. Paul has been essentially fully developed since the 1950s. Even with new development and redevelopment in recent years, the 1960 population of 313,411 was about 10% more than the 2010 population of 285,068. The Parks and Recreation Plan Chapter of the *Saint Paul Comprehensive Plan* adopted in 2010 states that "with 4,123 acres of parks, approximately 11% of Saint Paul's total land area is devoted to City parkland. When County, State, and Federal parkland is added in, over 20% of Saint Paul's land consists of park and natural areas."

Population is a primary factor in need for parkland. Trust for Public Land statistics (based on 3974 park acres/11.7% of land area) show that St. Paul has nearly twice the median amount of parkland per capita for cities with similar population density.

When the parkland dedication ordinance was adopted in 2007, the case was made that the need for parkland for an individual subdivision or development is not only a matter of the amount of parkland in the city as a whole, but is also dependent on the distance to parkland from the particular site and the type, intensity, and density of development of the site. It was noted that its main purpose was to provide for dedication of parkland where new higher density residential development creates a need for additional neighborhood or community parks in close proximity to that particular location. Analysis in 2006 was that even major redevelopment projects would not create a need for additional land in the city for regional parks, which already account for over 7% of St. Paul land area.

New development and redevelopment projects impact the need for small parks and ornamental spaces, neighborhood parks, and, to some extent, community parks, which together are currently about 3% of city land area. This is particularly true for high-density residential development, but, to a lesser degree, is also the case for higher-density commercial or industrial development.

The maximum amount of parkland dedication currently required in § 69.511(d) for commercial and industrial development is less than the maximum amount required for residential development. This reflects the difference in need for parkland created by these uses, a common practice in parkland dedication ordinances that have parkland dedication requirements for commercial and industrial subdivisions. This is also consistent with the state enabling legislation requirement that the dedication must be roughly proportionate to the need created by the development.

4.1 Assumptions

- New development impacts the need for new neighborhood-scale (mini, urban, and neighborhood parks) and contributes to the need for additional community-scale parkland as defined in the 2010 Park & Recreation System Plan.
- The current level of service for these types of parks, in terms of park area per dwelling unit and per employee, is generally the level of service that the City wants to maintain.
- Residential development contributes to 90% of the demand for park space; commercial/ industrial development contributes 10% of the demand for park space.

Table 4-1: Park Standards by Dwelling Unit and Employee

	Total	Residential	Commercial/ Industrial
Demand Generated for Parkland	100%	90%	10%
<i>Parkland by Type (acre)</i>			
Neighborhood (100%)	427	384	43
Community (5%)	18	16	2
Total (acres)	445	400	45
Total (sq. ft.)	19,384,200	17,424,000	1,690,200
# of Dwelling Units ¹	120,653		
# of Employees ²	173,732		
<i>Current Standard</i>			
Parkland/Dwelling Unit		145 sq. ft.	
Parkland/Employee			11 sq. ft.

¹ Number of dwelling units in Saint Paul as reported by the American Community Survey, 2008 - 2012

² Number of employees in Saint Paul as reported for 2013 by DEED.

4.2 Residential Dedication at the time of Building Permits

Based on the above analysis, the recommendation is to allow for the City and developer to mutually agree to provide 150 sq. ft. of land per dwelling unit, or otherwise a \$1,200 per-dwelling-unit fee in lieu of land would be required. The 2013 special legislation grants the City the ability to charge a city-wide flat fee per residential dwelling unit³.

The \$1,200 cash in lieu of payment per dwelling unit was determined by multiplying the current park standard/dwelling unit by the city-wide average per square foot land value.

$$(145 \text{ sq. ft. of parkland/dwelling unit}) \times (\$8.25/\text{sq. ft.})^4 = \$1,196$$

The dedication requirement would be based on the net increase in residential dwelling units on the development parcels up to a maximum amount of dedication, which is discussed below.

4.3 Commercial/Industrial Dedication at the time of Building Permits

The recommendation for commercial/industrial projects is to allow for the City and a developer to mutually agree on a dedication of land, which would be based on the parkland need generated by the number of employees for four general types of uses. Based on the analysis above, each employee in Saint Paul generates a need for about 11 sq. ft. of parkland. Table 4-3 shows how that translates to use types. Uses with more employees would be required to contribute more toward parkland dedication.

Table 4-3 Commercial/Industrial Parkland Need by Use

Commercial/Industrial Parkland Need by Use	# of Employees/ 1,000 sq. ft. of building GFA*	Parkland Need/1,000 sq. ft. building GFA
Commercial (offices, medical facilities, retail/services, limited production/processing)	2.50	28 sq. feet
Industrial (manufacturing, brewery, greenhouse, etc.)	1.00	11 sq. feet
Wholesale	0.67	7 sq. feet
Warehousing & Storage	0.33	4 sq. feet

*Gross floor area

It is also recommended that a commercial/industrial project must be at least 5,000 sq. ft. before it would be required to dedicate parkland or contribute the fee in lieu of land.

4.4 Dedication at the time of Building Permits for Mixed-Use Development

Mixed-use development will be required to meet the standards for both the residential and commercial components of the development, and the maximum requirement would be the same as for residential uses.

³ Under § 60.205, a dwelling is defined as: "One (1) or more rooms, designed, occupied or intended for occupancy as a separate living quarter, with a single complete kitchen facility (stove and/or oven, refrigerator, and sink), sleeping area, and bathroom provided within the unit for the exclusive use of a single household." Thus congregate care facilities, such as nursing homes, would not be required to pay parkland dedication fees.

⁴ Determined using Ramsey County Tax Records (June 2014) for properties identified as not tax exempt and having an estimated market value for land greater than \$0, and rounded to the nearest \$0.25.

4.5 Maximum Dedication of Land or Cash in Lieu Requirement

The state legislation allowing the City to require parkland dedication at the time of building permits grants authority to require dedication of a “reasonable portion” of land or a fee in lieu of the land. It is connected to the State’s parkland dedication enabling legislation for new subdivisions that states: “The municipality must reasonably determine that it will need to acquire that portion of land for the purposes stated in this subdivision⁵ as a result of the approval... (Minn. § 462.358 Subdiv. 2b(e)).” To meet the “reasonable portion” requirement as well as reflect market conditions in the City, the recommendation is for maximum parkland dedication requirements as follows:

- **New Residential or Mixed-Use Development:** A maximum of 4.5% of the buildable land or fee in lieu of 4.5% of the county assessor’s estimated market value of the parcel of land.
- **New Commercial & Industrial Development:** A maximum of 0.5% of the buildable land or fee in lieu of 0.5% of the county assessor’s estimated market value of the parcel of land.

Downtown parks are an example of the types of neighborhood- and community-scale parks needed for higher-density development. The approximately 275 acres of developable land in the downtown core (Chestnut St. to Hwy. 52 and I-94 to the river) includes approximately 13 acres of parkland, which equates to 4.7% of developable land. Based on this, 4.5% of buildable land is a “reasonable portion” of the land or value thereof to require for parkland dedication.

Parkland dedication at the time of building permits is currently capped at 2% for commercial/industrial development and 7% for residential or mixed-use including residential development, and cash in lieu of land is one-third of the estimated market value (EMV) of the land that would otherwise be dedicated. This is equal to approximately 2.3% of EMV for residential development and 0.7% of EMV for commercial/industrial development.

The proposed 4.5% of EMV maximum dedication payment for residential and mixed-use development and 0.5% of EMV for commercial/industrial development would be an increase in the maximum payment for residential development and a slight decrease in the maximum payment for commercial/industrial development, which re-aligns the fee in lieu with demand generated by residential versus commercial development.

4.6 Administrative Fee

The recommendation is to establish an administrative fee of the lesser of 5% of the cash in lieu fee or \$1,000 to offset the costs associated with administering the parkland dedication program, including determining the dedication requirement, accounting for the parkland dedication fund, and tracking fees. This includes staff time and benefits, and overhead costs for office space and information technology resources. Minneapolis included this as part of its parkland dedication ordinance. Further analysis of parkland dedication administration costs will be done to determine if this is the correct fee level.

⁵ Stated purposes include land for parks, recreation facilities, playgrounds, trails, wetlands, or open space.

5. Recommendation

The Comprehensive Planning Committee recommends that the Planning Commission release the following draft zoning code amendments for public review and set a Planning Commission public hearing for January 16, 2015.

Chapter 69. Zoning Code - Subdivision Regulations

ARTICLE V. GENERAL REQUIREMENTS AND DESIGN STANDARDS

Sec. 69.511. Parkland dedication requirements.

~~(ab) Parkland dedication requirement at the time of platting. Pursuant to Minn. Stat. Sec. 462.358, Subd. 2, as amended and as otherwise provided below, for platting of land for residential, commercial, or industrial development, the property owners, subdividers or developers shall dedicate two (2) percent of the total acreage of the plat a reasonable portion of the buildable land may be required to be dedicated or conveyed to the city on a one time basis, prior to or at the same time as recording the final plat, for the purposes listed in subdivision (a) of this section public use for parks, playgrounds, recreation facilities, trails, wetlands, or open space needed as a result of the plat, to a maximum of nine (9) percent of the total acreage of new lots that are being created for new residential or mixed-use development and to a maximum of four (4) percent of the total acreage of new lots that are being created for new commercial or industrial development. Land so dedicated shall be within the plat and/or, subject to agreement by the city council and the subdividers, in close proximity to the plat.~~

~~(a) Generally. Pursuant to Minn. Stat. Sec. 462.358, Subd. 2, as amended and as otherwise provided below, for subdivision and development of land, the owners, subdividers, or developers of the land shall convey to the city or dedicate to the public use a reasonable portion of the land for public use for parks, playgrounds, trails, open space, or conservation purposes. The city council shall determine the amount, location, and configuration of any land dedicated, taking into consideration the suitability and adaptability of the land for its intended purpose, future needs of the proposed development, and the following criteria:~~

~~(18) The parkland standards in Sec. 63.702 for future development of the plat, and whether the development Priority will be given to areas that are under-served by parks due to distance to existing parks, population density, or inadequate size of existing nearby parks;~~

~~(24) Conformance with the city's adopted comprehensive plan and development or project plans for sub-areas of the city, and ; (2) areas identified for park or open space conservation purposes in an adopted city, regional, state, or national plan;~~

~~(3) Areas that connect existing components of the open space network;~~

~~(4) Areas adjacent to existing public parks, trails, or open space;~~

~~(5) Areas representing significant landforms, native plant communities, sensitive habitat, or historical events;~~

~~(6) Areas containing vegetation identified as endangered or threatened, or that provide habitat for animals identified as endangered, threatened, or of special concern under 15 U.S.C. §1531 et. seq. or Minn. Stat. § 84.0895, and rules adopted under these respective laws;~~

- (7) Availability and commitment of resources, public and/or private, to develop, operate, and maintain the new park land;
 - (89) Land to be dedicated shall be large enough for its intended purpose;
 - (940) Land dedicated solely for roadway, stormwater retention, or utility purposes, or otherwise unsuitable for the purposes listed above, shall not be accepted;
 - (104) Dedicated land shall be accessible to the public served unless the city council determines that the dedicated land is an environmentally or ecologically sensitive area for which public access would be detrimental.
- (b) One-time basis of parkland dedication requirements. Once parkland has been dedicated or conveyed to the city under this section to meet the needs for parkland created by the plat, there shall be no further parkland dedication requirement under Sec. 63.701 at the time of building permits. If the property is later re-platted, or if a requirement for parkland dedication or a fee in lieu has previously been imposed at the time of building permits, the amount of parkland to be dedicated shall be based on the area of new lots and additional development for which parkland dedication or a fee in lieu has not previously been required.
- ~~(c) Parkland dedication option; land and/or cash dedication. At the discretion of the city council, the owners, subdividers, or developers of property subject to this section shall contribute an amount of cash, prior to obtaining the city clerk's signature on the final plat, in lieu of all or a portion of the land required under subdivisions (a) and (b) of this section or an equivalent value of improvements as approved by the city council. The amount of cash shall be based upon the county assessor's estimated market value of the total acreage of the plat, at the time of city council approval of the plat, multiplied by one-third of the percentage of the land that would otherwise be dedicated. In determining whether land dedication or cash in lieu thereof will be required, the city council shall consider without limitation the suitability and adaptability of land within the site for the purposes listed in subdivision (a) of this section and criteria for land dedication in subdivision (a) of this section.~~
- [Provisions for the option of a fee in lieu of the dedication of parkland are moved to Chapter 63, Regulations of General Applicability.]
- ~~(d) Parkland dedication at the time of building permits. For new residential units, commercial or industrial development, the property owners, subdividers or developers shall dedicate land or cash in lieu of land, on a one time basis, for the purposes listed in subdivision (a) of this section based on the number of additional accessory off-street parking spaces, and conversion of existing commercial/industrial accessory parking to residential spaces, for the development. For residential development, the amount of land shall be one hundred (100) square feet per surface parking space and fifty (50) square feet per parking space within a structure, to a maximum of seven (7) percent of the total land area of the property. For commercial and industrial development, the amount of land shall be thirty (30) square feet per surface parking space and fifteen (15) square feet per parking space within a structure, to a maximum of two (2) percent of the property. Land so dedicated shall be within or in close proximity to the development. The amount of cash in lieu of land shall be based upon the county assessor's estimated market value of the parcel of land per square foot, multiplied by one-third of the square feet of land that would otherwise be dedicated. For parking spaces for dwelling units required to be affordable under Saint Paul Housing and~~

~~Redevelopment Authority or other similar financing agreements, or other contractual agreement with the city, the amount of cash otherwise required shall be multiplied by the specified percentage of Twin Cities area median income at which the unit is required to be affordable. The city council may require the land dedication option under this subdivision (d) as a condition of plat approval, and in so doing may require that the land be dedicated prior to or at the same time as recording the final plat. In all other cases, the dedication of land or cash in lieu of land required under this subdivision (d) shall be done prior to obtaining building permits for development to which the parking spaces are accessory, and the dedication of land shall be subject to agreement by the city council and the owners, subdividers or developers; without such agreement, cash shall be paid in lieu of land dedication.~~

[Requirements for parkland dedication at the time of building permits, and for a fee in lieu of the dedication of parkland, are moved to Chapter 63, Regulations of General Applicability.]

(ce) *Parkland dedication option; private land maintained for public use.* The city council may, at its discretion, waive all or a portion of the land ~~or cash~~ dedication required under subdivisions ~~(b), (c) or (d)~~ (a) of this section and enter into an agreement for the private development and/or maintenance of land for public use for parks, playgrounds, recreation facilities, wetlands, trails, or open space, ~~or conservation purposes~~ within the proposed plat, subject to the following conditions:

- (1) The land area or value of the land and improvements privately developed and maintained for public use for parks, playgrounds, trails, open space, or conservation purposes must at least equal that required under this ordinance.
- (2) Land, facilities, and improvements accepted under this provision shall be accessible to the public in a manner similar to public land.
- (3) The city council must find, after recommendation of the director of parks and recreation and the parks commission, that such land and improvements will serve the purposes listed in subdivision (a) of this section; ~~and.~~
- (4) The city and the owners, subdividers, or developers of the land must have executed a parkland development agreement insuring that specified land shall be developed and maintained by the owners, subdividers, or developers, and any and all successors in interest thereof, of any type whatsoever, which includes, but is not limited to heirs and assigns, for the purposes listed in subdivision (a) of this section. The owners, subdividers, or developers must include a covenant running with the specified land indicating that the land to be developed and maintained for the purposes listed in subdivision (a) will revert to the city in the event of a failure to comply with this requirement. When a recordable covenant concerning the ownership, maintenance or use of private areas and facilities for parkland development is required, the covenant shall be submitted to the city for approval. Such covenant shall be recorded prior to or at the same time as the final plat when related to requirements under subdivision ~~(a)~~ (b) of this section, ~~and prior to obtaining building permits when related to requirements under subdivision (d) of this section.~~

(df) *Parkland dedication; conveyance standards.* Prior to dedication and conveyance of the required property to the city, the owners, subdividers or developers shall provide the city with an acceptable abstract of title or registered property abstract for all land dedicated for park purposes, evidencing good and marketable title without liens or encumbrances of any

kind except those encumbrances which the city council has approved or required in connection with the proposed plat. The foregoing abstracts shall otherwise evidence good and marketable title free and clear of any mortgages, liens, encumbrances, assessments and taxes. For any dedication of land required under subdivision (ab) of this section that is not formally dedicated to the city with the final plat, the landowner shall record all deeds for conveyance of the property to the city prior to or at the same time as recording the final plat. ~~For any dedication of land required under subdivision (d) of this section, the landowner shall record all deeds for conveyance of the property to the city prior to obtaining building permits for the development.~~

- ~~(g) *Parkland dedication; parkland development special fund created.* There is hereby established a parkland development special fund. All funds collected pursuant to the parkland dedication process shall be deposited in the parkland development special fund and used solely for the acquisition and development or improvement of lands dedicated for public use for parks, playgrounds, trails, open space, or conservation purposes in the planning district of the subdivision or development for which the funds were collected, or in an adjacent planning district within one-half mile of the subdivision or development. Such funds may not be used for ongoing operations or maintenance. All fund expenditures shall be approved by the city council upon recommendation of the director of parks and recreation in consultation with the parks and recreation commission. Expenditures from the parkland development special fund shall be in conformance with the city's adopted comprehensive plan and development or project plans for sub-areas of the city, and shall be consistent with other applicable criteria in subdivision (a) of this section. Payments made to satisfy the requirements of this section shall be made separately from any payments for building permits or any other payment.~~

[Moved to Chapter 63, Regulations of General Applicability.]

Chapter 63. Zoning Code – Regulations of General Applicability

ARTICLE VII. 63.700 PARKLAND DEDICATION

Sec. 63.701. Parkland dedication requirement.

Pursuant to Laws of Minnesota 2013, Chapter 85, Section 44, for development that increases the number of residential dwelling units and/or increases the floor area of commercial and/or industrial buildings on a parcel of land, a reasonable portion of the buildable land, proportionate to the additional need for parks created by the development, may be required to be conveyed to the city, or a fee in lieu of land shall be paid to the city, on a one time basis, prior to the issuance of building permits, for public use for neighborhood- and community-scale parks, playgrounds, recreation facilities, trails, wetlands, or open space needed as a result of the development, based on the following standards. Land conveyed or dedicated for this purpose shall be in close proximity to the development, and the conveyance of land to the city shall be subject to agreement by the city council and the developer. Without such agreement, a parkland dedication fee shall be paid to the city in lieu of the land.

- (a) For an increase in the number of residential dwelling units on a parcel of land, the amount of land conveyed or dedicated for this purpose shall be one hundred fifty (150) square feet per

additional dwelling unit, to a maximum of 4.5% of the buildable land, and the fee in lieu of land shall be twelve hundred dollars (\$1,200) per additional dwelling unit, to a maximum of 4.5% of the county assessor's estimated market value of the land on which the development is built.

- (b) For an increase or change in use of gross floor area for commercial and/or industrial use on a parcel of land, the amount of land conveyed or dedicated for this purpose shall be based on the additional floor area and/or change in use as follows, to a maximum of 0.5% of the buildable land, and the fee in lieu of land shall be the county assessor's estimated market value of the land that would otherwise be conveyed or dedicated, to a maximum of 0.5% of the county assessor's estimated market value of the land on which the development is built. An increase or change in use of less than five thousand (5,000) square feet of gross floor area shall be exempt from this requirement.

Table 63.701. Parkland Dedication for Commercial and Industrial Development

<u>Land Use</u>	<u>Parkland Dedication Requirement</u>
<u>Commercial</u>	<u>28 square feet per 1,000 square feet of GFA</u>
<u>Industrial</u>	<u>11 square feet per 1,000 square feet of GFA</u>
<u>Wholesale</u>	<u>7 square feet per 1,000 square feet of GFA</u>
<u>Warehousing & Storage</u>	<u>4 square feet per 1,000 square feet of GFA</u>

- (c) For mixed residential and commercial/industrial development that increases the number of residential dwelling units and/or increases the floor area of commercial and/or industrial buildings on a parcel of land, the amount of land conveyed or dedicated for this purpose shall be the sum of the amount for each use based on the standards in (a) and (b) above, to a maximum of 4.5% of the buildable land, and the fee in lieu of land shall be the sum of the fee in lieu for each use based on the standards in (a) and (b) above, to a maximum of 4.5% of the county assessor's estimated market value of the land on which the development is built.

- (d) Reduced parkland dedication fee for affordable housing. For dwelling units required to be affordable under Saint Paul Housing and Redevelopment Authority or other similar financing agreements, or other contractual agreement with the city, the parkland dedication fee otherwise required shall be multiplied by the specified percentage of Twin Cities area median income at which the dwelling unit is required to be affordable.

[Moved here from § 69.511(d).]

- (e) The city council shall determine the amount, location, and configuration of any land dedicated, taking into consideration the suitability and adaptability of the land for its intended purpose, future needs of the proposed development, and the criteria identified in Sec. 69.511(a) 1-10 of this code.
- (f) One-time basis of parkland dedication requirements. Once the maximum parkland dedication requirement under this section has been conveyed through the dedication of land or the payment of a dedication fee, there shall be no further parkland dedication requirement at the time of building permits. Should the property change uses from a use with a lower maximum dedication requirement to that with a higher maximum dedication requirement,

the maximum dedication requirement for the new development shall be the difference between the higher and lower maximum dedication requirement.

Sec. 63.702. Parkland dedication option; private land maintained for public use.

The city council may, at its discretion, waive all or a portion of the land or cash-dedication required under section 63.701 and enter into an agreement for the private development and/or maintenance of land for public use for parks, playgrounds, recreation facilities, wetlands, trails, or open space subject to the following conditions:

- (a) The land area or value of the land and improvements privately developed and maintained for public use for parks, playgrounds, trails, open space, or conservation purposes must at least equal that otherwise required under section 63.701.
- (b) Land, facilities, and improvements accepted under this provision shall be accessible to the public in a manner similar to public land.
- (c) The city council must find, after recommendation of the director of parks and recreation and the parks commission, that such land and improvements will serve the purposes listed in section 63.701.
- (d) The city and the owners or developers of the land must have executed a parkland development agreement insuring that specified land shall be developed and maintained by the owners or developers, and any and all successors in interest thereof, of any type whatsoever, which includes, but is not limited to heirs and assigns, for the purposes listed in section 63.701. The owners or developers must include a covenant running with the specified land indicating that the land to be developed and maintained for the purposes listed in section 63.701 will revert to the city in the event of a failure to comply with this requirement. When a recordable covenant concerning the ownership, maintenance or use of private areas and facilities for parkland development is required, the covenant shall be submitted to the city for approval. Such covenant shall be recorded prior to obtaining building permits for the development.

Sec. 63.703. Administrative fee.

An administrative fee of five (5) percent of the parkland dedication fee, to a maximum of one thousand dollars (\$1,000) per project, shall be paid by the building permit applicant to the city prior to permit issuance.

Sec. 63.704. Parkland dedication conveyance standards.

Prior to conveyance of the property to the city, the owners or developers shall provide the city with an acceptable deed of all land dedicated for park purposes, evidencing good and marketable title without liens or encumbrances of any kind except those that the city council has approved. The foregoing deed shall otherwise evidence good and marketable title free and clear of any mortgages, liens, encumbrances, assessments and taxes. The landowner shall record all deeds for conveyance of the property to the city prior to receiving building permits for the development.

Sec. 63.705. Parkland dedication; parkland development special fund.

All parkland dedication fees collected pursuant to this article, excluding administrative fees collected under Sec. 63.703, shall be deposited in the parkland development special fund created pursuant to this article, and shall be used solely for the acquisition, development, or improvement of public parks, playgrounds, recreation facilities, wetlands, trails, or open space within the city.

Funds collected shall be used for the aforementioned purposes within one-half (1/2) mile of the project for which the funds were collected or for the neighborhood or community park nearest to the project. Use of the funds collected for a project shall be documented and reported annually to the owner and developer of the project until use of all of the funds has been reported. Such funds may not be used for ongoing operations or maintenance. All fund expenditures shall be approved by the city council by resolution. Expenditures from the parkland development special fund shall be in conformance with the city's adopted comprehensive plan and development or project plans for sub-areas of the city. Payments made to satisfy the requirements of this section shall be made separately from any payments for building permits or any other payment to the city.

Chapter 61. Zoning Code – Administration and Enforcement

ARTICLE IV. 61.400 SITE PLAN REVIEW

Sec. 61.402. Site plan review by the planning commission.

...

(b) Site plan application:

...

- (6) Pre-application consultation. A pre-application consultation shall be held for residential, commercial, or industrial development on sites greater than 10 acres in area, abutting existing public parkland, without a park within a one-half (1/2) mile radius of the site, or within one-quarter (1/4) mile of the Green Line to discuss parkland dedication requirements and options. Development on land that has been platted within two (2) years or for which parkland has been dedicated as part of platting shall be exempt from this requirement.

Parkland Dedication – Proposed Ordinance Changes

In 2007, the City of Saint Paul enacted §69.511 allowing for dedication of parkland or a cash in lieu land of payment at the time of platting and the issuance of building permits. In 2011 and 2012, the City initiated a study to require parkland dedication only for new lots for new development and to change the metric used to measure density from parking due to eliminating the parking requirements along the Green Line. During public testimony for these changes, some groups called into question the City's ability to collect parkland dedication fees at the time of building permits. Based on this challenge, staff worked with the State Legislature to receive clear authority to do such. In 2013, the State of Minnesota passed the special legislation allowing the City to "require that a reasonable portion of land be dedicated to the public or impose a dedication fee in conjunction with the construction permit required for new housing units and new commercial and industrial development in the city..." In January 2014, the Planning Commission initiated a new zoning study to examine the City's parkland dedication ordinance to reflect the new legislation.

The following describes the City's existing parkland dedication policy, the recommended policy changes, and some impacts of the proposed changes. In addition, a few project examples are provided to demonstrate how these changes are reflected in real situations.

Existing and Proposed Parkland Dedication Requirements

Current Parkland Dedication Policy

Dedication of Land at Platting: Requires dedication of 2% of the plat as parkland.

Dedication of Land at Building Permits: Based on the number of new parking spaces and change in land use, requires parkland dedication as follows:

- Residential: 100 sq. ft. of land per surface parking space and 50 sq. ft. of land per structured parking space up to 7% of the development area.
- Commercial/Industrial: 30 sq. ft. of land per surface parking space and 15 sq. ft. of land per structured parking space up to 2% of the development area.

Cash in Lieu of Land: One-third of the estimated market value of the land that would otherwise be dedicated, reflecting a typical portion of need for parkland met by existing parks. Fees for affordable housing at the time of building permits are discounted.

Recommended Policy

Assumptions:

- New development impacts the need for new neighborhood-scale (mini, urban, and neighborhood parks) and contributes to the need for additional community-scale parkland as defined in the 2010 Park & Recreation System Plan.
- The level of park service today, in terms of park area/dwelling unit and job, is roughly the level of service that the City wants to continue to maintain in the future.
- Residential development contributes to 90% of the demand for park space; commercial/industrial development contributes 10% of the demand for park space.

Dedication of Land at Platting:

- Up to 9% for residential land and up to 4% for commercial/industrial land.
- City would determine if it wants the land as it does today.
- If land is not required, payment would be paid at the time of building permits.

Parkland Dedication at Building Permits:

Residential:

- 150 sq. ft. of parkland/dwelling unit if a land dedication option is agreed upon.
- \$1,200/dwelling unit up to 4.5% of the county assessors EMV of the parcel of land.
- Payments for affordable housing would continue to be discounted based on affordability levels.

Commercial/Industrial:

- Parkland/1,000 square feet of gross floor area if a land dedication option is agreed upon
 - Commercial: 28 square feet of parkland/1,000 square feet of GFA
 - Industrial: 11 square feet of parkland/1,000 square feet of GFA
 - Wholesale: 7 square feet of parkland/1,000 square feet of GFA
 - Warehousing & Storage: 4 square feet of parkland/1,000 square feet of GFA
- Cash in lieu of land would be based on the amount of parkland needed by use per at the per square foot value for the site.
- Projects of less than 5,000 sq. ft. in gross floor area would have no parkland dedication requirement.

Mixed Use: Residential requirement plus commercial requirement up to 4.5% of the parcel of land/EMV, with the commercial/industrial portion capped at 0.5%.

Administration Fee: 5% of the Parkland Dedication Fee up to \$1,000

Impacts of the Proposal

- Residential maximum cash requirement would increase by 93% (from 2.3% to 4.5% of land EMV).
- Commercial/industrial maximum cash requirement would decrease by 29% (from 0.7% to 0.5% of land EMV).
- As the density metric is shifted to dwelling units and gross floor area from parking spaces, the collection of the parkland dedication is based on a more stable metrics as parking requirements are not constant over time.
- The proposal reflects support for small business expansions by eliminating the dedication at the time of building permits for small commercial/industrial projects that would have limited impact to park system demand and require little land dedication or cash in lieu of payments.
- Use of a per-unit flat fee and a land dedication per gross floor area per use type increases the ability for users to calculate fee requirements.
- Parkland dedication requirements at the time of platting (land) will be similar to other communities in the Metropolitan area; the cash in lieu of fee at the time of building permits will continue to be lower than that instituted by Minneapolis.
- Maintains the policy of requiring affordable housing projects to contribute toward parkland needs created by the project.
- The institution of an administration fee will offset the staff costs of implementing this program.

Cash in Lieu of Land Collected Under Existing Code and Under Proposed Changes

The following tables show projects that have been or are in the process of being developed. It identifies the payment that was collected under the City's current parkland dedication ordinance and then compares it to what an uncapped payment would be and maximum payment that could be collected under the proposed revisions.

Table 1: Residential Projects

<i>Project Name (# of units) (EMV of land)</i>	<i>Payment Collected</i>	<i>New Uncapped Payment¹ (With Afford. Housing Disc.)</i>	<i>Maximum Payment (4.5% EMV Cap)</i>
The Lyric (171 units) (\$1,542,000)	\$35,980	\$205,200	\$69,390
Schmidt Brewery (121 units) (\$1,089,700)	\$21,452	\$145,200 (\$87,120)	\$49,067

Table 2: Commercial/Industrial Projects

<i>Project Name (Area/Type of use) (EMV of land/Area of parcel)</i>	<i>Payment Collected</i>	<i>New Uncapped Payment¹</i>	<i>Maximum Payment (0.5% EMV Cap)</i>
Baldinger Bakery (133,400 sf industrial) (\$406,000/405,979 sq. ft.)	\$890	\$1,467	\$2,030
Bang Brewery (1,838 sf industrial) (\$57,500/9,583 sq. ft.)	\$180	\$0	\$288
Habitat for Humanity Office (27,600 sf commercial) (\$851,000/28,750 sq. ft.)	\$1,488	\$22,875	\$4,255

Table 3: Mixed-Use Projects

<i>Project Name (# of units) (area of use) (EMV of land/Area of parcel)</i>	<i>Payment Collected</i>	<i>New Uncapped Payment¹</i>	<i>Maximum Payment (4.5% EMV Cap)</i>
Pioneer Endicott (234 units) (31,900 sf commercial) (\$1,149,000/47,045 sq. ft.)	\$0	\$302,615 (\$280,800) (\$21,815)	\$51,705
The Penfield (254 units) (27,500 sf commercial) (\$3,255,000/94,961 sq. ft.)	\$93,844	\$331,193 (\$304,800) (\$26,393)	\$146,475
The Vintage (208 units) (39,000 sf commercial) (\$2,718,900/120,404 sq. ft.)	\$57,718	\$274,259 (\$249,600) (\$24,659)	\$122,351

¹ Based on gross units/building area. Housing units and/or building area previously developed were not excluded from this calculation.